



0000102636

25

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

MAR 28 2002

DOCKETED BY

mal

MAR 28 A 9:29

ARIZONA CORPORATION COMMISSION
INVENT CONTROL

IN THE MATTER OF THE APPLICATION OF
H2O, INC., FOR AN EXTENSION OF ITS
EXISTING CERTIFICATE OF CONEINENCE
AND NECESSITY

DOCKET NO. W-02234A-00-0371

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, L.L.C. DBA JOHNSON
UTILITIES COMPANY FOR AN EXTENSION
FOR ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE WATER AND
WASTEWATER SERVICE TO THE PUBLIC IN
THE DESCRIBED AREA IN PINAL COUNTY,
ARIZONA

DOCKET NO. WS-02987A-99-0583

DOCKET NO. WS-02987A-00-0618

IN THE MATTER OF THE APPLICATION OF
DIVERSIFIED WATER UTILITIES, INC. TO
EXTEND ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY

DOCKET W-02859A-00-0774

IN THE MATTER OF THE APPLICATION OF
QUEEN CREEK WATER COMPANY TO
EXTEND ITS CERTIFICATE OF CONVEINEINCE
AND NECESSITY

DOCKET NO. W-01395A-00-0784

PROCEDURAL ORDER**BY THE COMMISSION:**

On September 4, 2001, the Arizona Corporation Commission ("Commission") issued Decision No. 63960 which was subsequently amended by Decision No. 64062 on October 4, 2001 in which it approved the extension of the Certificate of Convenience and Necessity ("Certificate") of Johnson Utilities, L.L.C. dba Johnson Utilities Company ("JUC" or "Applicant") and the other above-captioned utilities subject to a number of conditions. One condition required of the respective utilities is to cure any minor or major violations cited by the Arizona Department of Environmental Quality ("ADEQ") within 90 days from the date of notice or their respective parcel extensions would be rendered null and void without further Order of the Commission.

1 On October 16, 2001, ADEQ issued and mailed to Mr. George Johnson, JUC's manager, a
2 Notice of Violation ("NOV"). The NOV issued by ADEQ alleges four violations which were
3 discovered during a review of JUC's file completed on October 5, 2001. The four violations relate to
4 the provision of service by JUC with respect to its Sun Valley Farms Unit V, Public Water System as
5 follows: the failure of JUC, on two occasions, to secure an Approval of Construction ("AOC"); the
6 failure of JUC to secure an Approval to Construct ("ATC"); and the failure of JUC to maintain a log
7 of all onloading, chlorine disinfectant additions and residual free chlorine measurements.

8 On October 24, 2001, Mr. Patrick C. Williams, the Manager of the Commission's Compliance
9 and Enforcement Section for its Utilities Division ("Staff"), sent a letter to JUC requesting
10 notification of compliance with ADEQ's NOV. Subsequently, the Commission did not receive any
11 comments or responses from JUC.

12 On January 18, 2002, Mr. Williams sent another letter to JUC informing it that, pursuant to
13 the Decision No. 63960 as amended, due to Applicant's failure to timely cure the deficiencies cited by
14 ADEQ, JUC's extension of its Certificate granted therein was null and void as of January 16, 2002.
15 In his letter, Mr. Williams cited a discussion he had with an ADEQ official.

16 On January 24, 2002, JUC responded stating that it believed it was in compliance with
17 Decision No. 63960 as amended.

18 On January 28, 2002, JUC filed a request for a retroactive extension of time to comply with
19 Decision No. 63960 as amended and for an Order declaring that the Decisions remained in full force
20 and effect since their issuance. In its request, JUC stated that it did not receive Mr. Williams' letter
21 of October 24, 2001 and that on January 23, 2002, counsel for JUC had written the Commission
22 advising it that he believed that all violations had been "cured" prior to the expiration of the 90 day
23 deadline required in the Commission's Decision as amended.

24 Attached to JUC's request for a retroactive extension were copies of an ATC and an AOC
25 issued by ADEQ and what appears to be a partially complete chlorination log for the system in
26 question. JUC also attached a copy of an affidavit of Mr. Michael L. Denby, an attorney for the
27 Applicant who indicated that he had been informed by William DePaul, the Environmental
28 Enforcement Coordinator at ADEQ who had signed the NOV and who Mr. Williams had spoken with

1 earlier, that ADEQ neither required nor expected JUC to undertake any additional actions to comply
2 with the October 16, 2001 NOV. However, Mr. Denby went on to state in his affidavit that Mr.
3 DePaul had further indicated the matter was not closed and ADEQ would continue to pursue some
4 form of order to finalize and close the NOV. JUC failed to submit any documentation from ADEQ
5 that the matter involving the October 16, 2001 NOV had been concluded. In closing, JUC requested
6 a prompt resolution as certain developers, in order to secure their financing, will be required to show
7 that the Company's Certificate is in full force and effect in order to secure financing.

8 On February 6, 2002, Staff filed a response to JUC's request for a retroactive extension of
9 time in order to comply with Decision No. 63960 as amended. In its response, Staff indicates that it
10 does not oppose a limited extension of time for JUC to document that the NOV has been
11 satisfactorily resolved. Staff pointed out that, in order to do this satisfactorily, JUC will have to
12 provide documentation from ADEQ that its October 16, 2001 NOV has or will be resolved to
13 ADEQ's satisfaction. Staff recommended that JUC be given a retroactive extension of time for
14 compliance until February 22, 2002 and that JUC be ordered to notify all parties in the above-
15 captioned proceeding of its requested extension by serving a copy of its request on all parties to the
16 proceeding and to provide certification of same to the Commission. Additionally, Staff
17 recommended that, if JUC does not submit written documentation from ADEQ by February 22, 2002
18 stating that all violations cited in the October 16, 2001 NOV have been cured, the Certificate issued
19 to JUC in Decision No. 63960 as amended shall remain null and void.

20 On February 8, 2002, JUC filed its response to that of Staff. Therein, Applicant attached
21 documentation in the form of a copy of a letter from Mr. DePaul to Mr. Williams. The letter states
22 that events resulting in the violations "had been addressed and were no longer continuing to accrue
23 daily penalties. However, the NOV identifying the violations remains unresolved . . ." because the
24 parties have not yet held face to face meetings. JUC also attached a copy of an ADEQ Compliance
25 Status Report dated January 24, 2002, for its Sun Valley Public Water System that is marked, "No
26 Major Deficiencies," and that states the system's water met the requirements of the Safe Drinking
27 Water Act.

1 As of February 22, 2002, Staff had not filed any further comments on this matter¹.

2 On February 22, 2002, by Procedural Order, an extension of time was granted to JUC until
3 March 29, 2002, to show compliance with Decision No. 63960 as amended. JUC was also ordered to
4 provide notice to the parties to the proceeding of its request herein and to provide a written statement
5 from ADEQ that stated that all violations cited in the October 16, 2001 NOV had been cured. Staff
6 was directed to file by March 15, 2002, its response to any ADEQ documentation that was filed
7 concerning the status of the violations.

8 On February 26, 2002, JUC filed certification that notice had been provided to all parties
9 herein by mailing each of them a copy of its request.


10 On March 11, 2002, a copy of a letter from Mr. DePaul of ADEQ was filed with the
11 Commission. Mr. DePaul stated " . . . all violations cited in the October 16, 2002 NOV have been
12 "cured" on or before January 14, 2002. . . "

13 On March 14, 2002, Staff filed a Memorandum stating that it believes JUC is in compliance
14 with Decision No. 63960 as amended.

15 Accordingly, based on ADEQ's documentation and Staff's Memorandum dated March 14,
16 2002, the violations cited by ADEQ have been cured in a timely fashion. Therefore, JUC is in
17 compliance with Decision No. 63960 as amended and JUC's Certificate approved therein is valid.

18 IT IS THEREFORE ORDERED that Johnson Utilities, L.L.C. dba Johnson Utilities
19 Company is in compliance with Decision No. 63960 as amended by Decision No. 64062 and the
20 Certificate of Convenience and Necessity approved therein is valid.

21 DATED this 28th day of March, 2002.

22
23
24 
25 MARC E. STERN
26 ADMINISTRATIVE LAW JUDGE
27
28

¹ On February 11, 2002, Mr. Williams wrote a letter to Mr. DePaul requesting clarification whether the violations cited in the NOV had been "cured."

Copies of the foregoing mailed/delivered
this 28th day of March, 2002 to:

Richard L. Sallquist
SALLQUIST & DRUMMOND
2525 East Arizona Biltmore Circle, Ste. A117
Phoenix, AZ 85016
Attorneys for Johnson Utilities, L.L.C.

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Jay Shapiro
Karen E. Errant
FENNEMORE CRAIG, P.C.
3003 N. Central, Ste. 2600
Phoenix, AZ 85012
Attorneys for H2O Water Company

Ernest Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

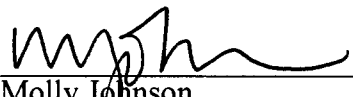
Charles A. Bischoff
JORDAN & BISCHOFF
7272 E. Indian School Road, Ste. 205
Scottsdale, AZ 85251
Attorneys for Queen Creek Water Company

Richard Tobin
Deputy Director
ADEQ
3033 N. Central Avenue
Phoenix, AZ 85012

William Sullivan
MARTINEZ & CURTIS, P.C.
2712 N. 7th Street
Phoenix, AZ 85008

Bill DePaul
Enforcement Coordinator
Drinking Water Compliance and Enforcement
Unit
ADEQ
3033 N. Central Avenue
Phoenix, AZ 85012

Petra Schadeberg
PANTANO DEVELOPMENT LTD.
PARTNERSHIP
3408 N. 60th Street
Phoenix, AZ 85018

By: 
Molly Johnson
Secretary to Marc E. Stern

Richard N. Morrison
SALMON, LEWIS & WELDON
4444 N. 32nd Street, Ste. 200
Phoenix, AZ 85018

Kathy Aleman, Manager
WOLFCOR, L.L.C. & WOLFKIN FARMS
Southwest Properties, Inc.
3850 E. Baseline Road, Ste. 123
Mesa, AZ 85026

Dick Maes, Project Manager
VISTOSO PARNERS, L.L.C.
1121 W. Warner Road, Ste. 109
Tempe, AZ 85284